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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel, hereby responds to the invitation for comments issued by the Commission in the Notice of Proposed Rulemaking in the above-captioned proceeding, released December 9, 1994 (hereinafter "Notice").

I. BACKGROUND AND PRELIMINARY STATEMENT

AAR is a voluntary non-profit organization composed of railroad companies operating in the United States, Canada and Mexico. The AAR is the joint representative and agent of these railroads in connection with federal regulatory matters of common concern to the industry as a whole, including matters pertaining to the regulation of communications. In addition, AAR functions as the frequency coordinator with respect to the operation of land mobile and other radio-based services.

AAR members depend heavily on private operational fixed microwave services (POFS) regulated under Part 94 of the Commission's rules. AAR members use private microwave facilities to monitor and control more than 1.2 million freight cars on more

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than 215,000 miles of track. These POFS systems also relay critical telemetry data from trackside defect detectors located throughout the nationwide rail network, and are vital to coordination of operations among different railroads. As a result of this extensive use, the railroad industry and AAR have a vital interest in this proceeding.

II. PART 101 CAN BE FURTHER STREAMLINED AND SIMPLIFIED

The AAR supports and applauds the Commission's efforts to streamline the regulatory process and avoid needless duplication. The proposal for a new Part 101 of the rules is a valuable step in the right direction. Nevertheless, the proposed Part 101 is at times somewhat confusing and difficult to follow. For instance, in many cases throughout the document, standards are given, but it is unclear whether they are applicable to common carriers, private users or both. In addition, there are inconsistencies in the use of terms throughout the document. For example, the definition of frequency tolerance in the notes to Section 101.3 is expressed in parts per million (PPM) or Hertz. The frequency specifications in the body of the text, however, refer to frequency tolerance by percent. Consistency in use of terms and definitions will avoid the need for conversion.^{1/}

The Part 101 section on modification of station licenses (Section 101.57) is also inconsistent. Subsection (b) states

^{1/} Another example of the inconsistency in the use of terms can be found in Section 101.45 which uses the terms "geostationary satellite" and "geostationary space station" interchangeably.

that modifications for extension of construction periods will not be granted for delays caused by lack of financing or for lack of site availability. Subsection (b)(1) points out, however, that time extensions may be granted when the need arises because of circumstances beyond the applicant's control. This phrasing ignores the possibility that an inability to obtain a site may be due to circumstances beyond the applicant's control. More appropriate language may be "No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability or other reasons unless the applicant demonstrates by means of a verified statement that the licensee has made diligent efforts to construct the facilities and:..."

Members of the railroad industry took part in the working group which developed the technical rule proposals found in the TIA/NSMA joint comments. TIA's efforts and suggestions to combine the technical standards for private users and common carriers should help eliminate some of the confusion in the proposed Part 101.

III. PART 101 MUST PRESERVE THE SEPARATE IDENTITY AND UNIQUE CHARACTERISTICS OF THE PRIVATE OPERATIONAL FIXED USERS

The recent legislation authorizing the "Use of Competitive Bidding" recognized the unique nature of internal communications systems by excluding nonsubscription-based services from the

spectrum auction process.^{2/} The railroads and other fixed microwave licensees operate communication systems which perform vital public safety operations. The paramount concern of the AAR is to preserve the integrity and reliability of its members railroads' private microwave communications systems so as to ensure safe, reliable and efficient operation of the nation's railroads. This priority endows the internal communications systems regulated by Part 94 with unique characteristics distinguishable from common carrier use of the microwave service. Because the railroads use the microwave services primarily for safety purposes and for the internal support of railroad operations, rather than for providing a communications service to customers, they wish to preserve the regulatory framework which recognizes and supports these unique needs. In order to treat users of spectrum on a level playing field, it is necessary to accommodate their unique characteristics.

For the reasons just discussed, the AAR wishes to ensure that the merger of Parts 94 and 21 will not result in the loss of the private service's unique identity nor the compromise of its essential priorities of safety and reliability. The loss of identity private users face in the proposed part 101 is illustrated in the proposed definition of operational fixed station, which would eliminate any affirmative reference to the

^{2/} The legislation states that competitive bidding will apply to spectrum use where, "the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers..." 47 U.S.C. §309(j)(2).

use of the spectrum.^{3/} Instead, the proposed definition is couched in negative terms, describing what the fixed station is not used for. It is imperative that the Commission not ignore the fundamental differences between common carriers and the private service in its attempt to streamline the regulatory process. AAR strongly recommends the retention of the definition in Section 94.3: "A fixed station not open to public correspondence, operated by and for the sole use of those persons or agencies operating their own radiocommunications facilities." 47 C.F.R. §94.3. Preservation of this definition will help ensure the Commission recognizes the proper role of the private service in its regulatory framework.

IV. THERE SHOULD BE NO DISTINCTION BETWEEN PRIVATE USERS AND COMMON CARRIERS WITH RESPECT TO SPECIAL TEMPORARY AUTHORIZATIONS AND TEMPORARY FIXED OPERATION

Although the POFS and the common carrier service differ in terms of the nature of the service provided, they do share many similar operating needs. Proposed Part 101 makes a distinction between POFS users and common carriers with respect to eligibility for temporary authorizations but there is no logical rationale which justifies this differentiation. AAR recommends that POFS users be eligible for temporary fixed operation in

^{3/} The current definition in Part 94.3 is "A fixed station not open to public correspondence, operated by and for the sole use of those persons or agencies operating their own radiocommunication facilities. This term includes all stations licensed in the fixed service under this part." The proposed definition is "A fixed station not open to public correspondence." Proposed 101.3.

exactly the same manner as common carriers under the proposed rules.

V. A TRANSITION PERIOD IS NECESSARY TO EFFECT THE CHANGE FROM PARTS 21 AND 94 TO PART 101

The proposed Part 101 does not provide for a transition period to deal with the changeover from Parts 21 and 94 and to address the status of those who will necessarily remain licensed under Parts 21 and 94 until they either apply for a license renewal or modification. The relicensing of private microwave users facing reallocation from the 2 Ghz range will speed up the transition, yet many users will still remain licensed under Part 94. A specified transition period and date of entry into force will facilitate the transition process.

VI. THE DEFINITION OF MULTIPLE ADDRESS SYSTEM SHOULD BE REVISED

The definition of Multiple Address System ("MAS") in proposed Section 101.3 specifies that "Each master station must serve at least its own four remotes operating on its assigned frequency." The definition should state that an MAS must serve more than one remote, rather than specifying a particular number as a minimum. For the railroads, there are instances where two or three remotes are necessary to provide trackside service but where, because of topography and the particular routing of the railroad right-of-way, it is not possible to have propagation to four remotes. The only other option for the railroads is to use

point to point licensing, which is more difficult and expensive. Revision of the definition would facilitate a more cost efficient communications infrastructure for the railroads.

VII. THERE SHOULD BE NO SUBSTANTIVE CHANGES TO THE TREATMENT OF MUTUALLY EXCLUSIVE APPLICATIONS OR THE USE THE RANDOM SELECTION PROCESS

Proposed Section 101.45 addresses the subject of mutually exclusive applications and the random selection process. This section appears to combine the relevant portions of Section 21.31 and Section 94.37(c). Since the aim of Part 101 is to streamline and simplify the regulatory process, AAR assumes that this section effects no substantive change in the rules. AAR is concerned that this combination not alter the treatment of mutually exclusive applications and the random selection process. AAR specifically wishes to ensure that this section does not alter the existing balance regarding access to frequencies as between common carriers and private users, nor place an additional regulatory burden upon the POFS.

VIII. CONCLUSION

AAR applauds the Commission's efforts to simplify the regulatory process. Such a simplification will ease the burden on both the regulators and the regulatees. Proposed 101 can be further clarified and streamlined.

One of AAR's primary concerns is to ensure that their unique identity is not lost in the process and that the POFS users not

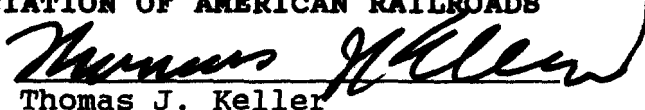
face additional regulatory burdens or loss of regulatory options. AAR also believes that the regulatory framework should reflect existing practice of both the POFS users and the common carriers and has directed its comments to clarify specific definitional issues.

AAR welcomes the opportunity to review the other comments submitted and to make additional comments in the reply phase.

Respectfully submitted,

ASSOCIATION OF AMERICAN RAILROADS

By:


Thomas J. Keller
Sari Zimmerman

VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND, CHARTERED
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 371-6060

Its Attorneys

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